

HAGENS BERMAN SOBOL SHAPIRO LLP  
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*Attorneys for Plaintiff Theadora King*

[Additional Counsel on Signature Page]

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

THEADORA KING, individually and on behalf )  
of all others similarly situated, )

Plaintiff, )

v. )

SAFEWAY, INC., )

Defendant. )

No. 08-cv-0999-EDL

DECLARATION OF DANIEL J.  
KUROWSKI IN SUPPORT OF  
ADMINISTRATIVE MOTION TO  
SHORTEN TIME

ACTION FILED: January 11, 2008

1 I, DANIEL J. KUROWSKI, declare as follows:

2 1. I am an attorney duly licensed to practice before all of the courts of the State of  
3 Illinois. I am associated with the law firm of Hagens Berman Sobol Shapiro LLP, one of the  
4 counsel of record for Plaintiff in the above-entitled action. I have personal knowledge of the  
5 matters stated herein and, if called upon, I could and would competently testify thereto.

6 2. Attached are true and correct copies of the following exhibits:

7 Exhibit A: February 20, 2008 Transfer Order issued in MDL 1907, *In re Aurora Dairy*  
8 *Corporation Organic Milk Marketing and Sales Practices Litigation*;

9 Exhibit B: February 26, 2008 Conditional Transfer Order (CTO-1) issued by the  
10 Judicial Panel on Multidistrict Litigation in MDL 1907, *In re Aurora Dairy*  
*Corporation Organic Milk Marketing and Sales Practices Litigation*;

11 Exhibit C: February 26, 2008 letter from Mark Mester, attorney at Latham & Watkins  
12 LLP, to Jeffrey N. Lüthi, Clerk of the Panel on Multidistrict Litigation;

13 Exhibit D: March 5, 2008 e-mail from Daniel J. Kurowski, attorney at Hagens Berman  
14 Sobol Shapiro LLP, to Kathleen P. Lally, attorney at Latham & Watkins,  
regarding a truncated briefing schedule for the Motion to Remand; and

15 Exhibit E: March 5, 2008 e-mail from Kathleen P. Lally, attorney at Latham &  
16 Watkins, to Daniel J. Kurowski, attorney at Hagens Berman Sobol Shapiro  
17 LLP, re: response to Kurowski e-mail to truncate briefing schedule for the  
Motion to Remand.

18 3. I spoke with attorney Kathleen P. Lally of Latham & Watkins LLP, counsel for  
19 Safeway, Inc., on the afternoon of March 5, 2008. She indicated that her client, Safeway, would  
20 not agree to a shortened briefing schedule.

21 I declare under penalty of perjury under the laws of the United States of America that the  
22 foregoing is true and correct. Executed this 5th day of March, 2008, at Oak Park, Illinois.

23  
24 /s/ Daniel J. Kurowski  
DANIEL J. KUROWSKI

25  
26 I, Shana E. Scarlett, am the ECF User whose ID and password are being used to file this  
27 Declaration of Daniel J. Kurowski in Support of Administrative Motion to Shorten Time. In  
28 compliance with General Order 45, X.B., I hereby attest that Daniel J. Kurowski has concurred in  
this filing.

**CERTIFICATE OF SERVICE**

I hereby certify that on March 5, 2008 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses registered, as denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

/s/ Shana E. Scarlett  
SHANA E. SCARLETT

## Mailing Information for a Case 3:08-cv-00999-EDL

### Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

- **Steve W. Berman**  
steve@hbsslaw.com,robert@hbsslaw.com,heatherw@hbsslaw.com,bonneym@hbsslaw.com
- **Elizabeth Anne Fegan**  
beth@hbsslaw.com
- **Livia M. Kiser**  
livia.kiser@lw.com,che filing@lw.com
- **Mark S. Mester**  
mark.mester@lw.com,che filing@lw.com,barbara.butl@lw.com
- **Shana E. Scarlett**  
shanas@hbsslaw.com,nancyq@hbsslaw.com,sf\_filings@hbsslaw.com
- **Viviann C Stapp**  
viviann.stapp@lw.com,#sfdocket@lw.com

### Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

**Steve W. Berman**  
Hagens Berman Sobol Shapiro LLP  
1301 Fifth Avenue, Suite 2900  
Seattle, WA 98101

# Exhibit A

UNITED STATES JUDICIAL PANEL  
on  
MULTIDISTRICT LITIGATION

UNITED STATES  
JUDICIAL PANEL ON  
MULTIDISTRICT LITIGATION

Feb 20, 2008

FILED  
CLERK'S OFFICE

IN RE: AURORA DAIRY CORP. ORGANIC  
MILK MARKETING AND SALES  
PRACTICES LITIGATION

MDL No. 1907

TRANSFER ORDER

**Before the entire Panel<sup>\*</sup>:** Plaintiffs in the District of Colorado *Freyre* action have moved, pursuant to 28 U.S.C. § 1407, for centralization of this litigation in the District of Colorado. Defendant in all actions, Aurora Dairy Corp. (Aurora), opposes plaintiffs' motion but, alternatively, supports selection of the District of Colorado as the transferee forum. Plaintiffs in the District of Colorado *Still* action and two potential tag-along actions pending in the District of Colorado support centralization in the District of Colorado. Plaintiffs in the Eastern District of Missouri action support centralization in the Eastern District of Missouri.

This litigation currently consists of four actions listed on Schedule A and pending, respectively, in the following three districts: two actions in the District of Colorado, and an action each in the Southern District of Florida and the Eastern District of Missouri.<sup>1</sup>

On the basis of the papers filed and hearing session held, we find that these four actions involve common questions of fact, and that centralization under Section 1407 in the Eastern District of Missouri will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation. Plaintiffs in all four actions, which are brought on behalf of putative nationwide classes, contend that Aurora misled them into believing that the milk that they purchased was "organic" or "USDA organic" when in fact the milk failed to meet organic standards, including those established by the U.S. Department of Agriculture and the federal Organic Foods Production Act, 7 U.S.C. § 6501, *et seq.* As a result, plaintiffs bring a variety of state law claims, asserting that, *inter alia*, they have paid artificially high prices for Aurora's organic milk. Centralization under Section 1407 will eliminate duplicative discovery; prevent inconsistent pretrial rulings (particularly with respect to the issue of class certification); and conserve the resources of the parties, their counsel and the judiciary.

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<sup>\*</sup> Judge Heyburn took no part in the disposition of this matter.

<sup>1</sup> In addition to the four actions now before the Panel, the parties have notified the Panel of eleven related actions pending, respectively, as follows: four actions in the District of Colorado, two actions in the Northern District of California, and an action each in the Eastern District of Arkansas, the District of Minnesota, the Eastern District of New York, the Southern District of New York, and the Western District of Washington. These actions and any other related actions will be treated as potential tag-along actions. *See* Rules 7.4 and 7.5, R.P.J.P.M.L., 199 F.R.D. 425, 435-36 (2001).

- 2 -

Aurora opposes centralization, asserting that, *inter alia*, transfer of the actions under Section 1407 is unnecessary because voluntary alternatives to Section 1407 are superior. We respectfully disagree. Transfer under Section 1407 has the salutary effect of placing all actions in this docket before a single judge who can formulate a pretrial program that: (1) allows discovery with respect to any non-common issues to proceed concurrently with discovery on common issues, *In re Joseph F. Smith Patent Litigation*, 407 F.Supp. 1403, 1404 (J.P.M.L. 1976); and (2) ensures that pretrial proceedings will be conducted in a streamlined manner leading to the just and expeditious resolution of all actions to the overall benefit of the parties and the judiciary.

We are persuaded that the Eastern District of Missouri, where the first-filed action is pending, is an appropriate transferee forum for this litigation. Given the geographic dispersal of the constituent actions and the potential tag-along actions, the Eastern District of Missouri offers a relatively convenient forum for this litigation.

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, the actions listed on Schedule A and pending outside the Eastern District of Missouri are transferred to the Eastern District of Missouri and, with the consent of that court, assigned to the Honorable E. Richard Webber for coordinated or consolidated pretrial proceedings with the action listed on Schedule A and pending in that district.

PANEL ON MULTIDISTRICT LITIGATION



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D. Lowell Jensen  
Acting Chairman

John G. Heyburn II, Chairman\*  
Robert L. Miller, Jr.  
David R. Hansen

J. Frederick Motz  
Kathryn H. Vratil  
Anthony J. Scirica

**IN RE: AURORA DAIRY CORP. ORGANIC  
MILK MARKETING AND SALES  
PRACTICES LITIGATION**

MDL No. 1907

**SCHEDULE A**

District of Colorado

Rebecca Freyre, et al. v. Aurora Dairy Corp., C.A. No. 1:07-2183  
Mona Still, et al. v. Aurora Dairy Corp., C.A. No. 1:07-2188

Southern District of Florida

Maya Fiallos v. Aurora Dairy Corp., C.A. No. 1:07-22748

Eastern District of Missouri

Kristine Mothershead, et al. v. Aurora Dairy Corp., C.A. No. 4:07-1701



# Exhibit B

MULTIDISTRICT LITIGATION

**CHAIRMAN:**  
Judge John G. Heyburn II  
United States District Court  
Western District of Kentucky

**MEMBERS:**  
Judge D. Lowell Jensen  
United States District Court  
Northern District of California

Judge J. Frederick Motz  
United States District Court  
District of Maryland

Judge Robert L. Miller, Jr.  
United States District Court  
Northern District of Indiana

Judge Kathryn H. Vratil  
United States District Court  
District of Kansas

Judge David R. Hansen  
United States Court of Appeals  
Eighth Circuit

Judge Anthony J. Scirica  
United States Court of Appeals  
Third Circuit

**DIRECT REPLY TO:**

Jeffery N. Lüthi  
Clerk of the Panel  
One Columbus Circle, NE  
Thurgood Marshall Federal  
Judiciary Building  
Room G-255, North Lobby  
Washington, D.C. 20002

Telephone: [202] 502-2800  
Fax: [202] 502-2888  
<http://www.jpml.uscourts.gov>

February 26, 2008

TO INVOLVED COUNSEL

Re: MDL No. 1907 -- IN RE: Aurora Dairy Corp. Organic Milk Marketing and Sales Practices Litigation

(See Attached CTO-1)

Dear Counsel:

Attached hereto is a copy of a conditional transfer order filed today by the Panel involving the above-captioned matter. This matter is transferred pursuant to Rule 7.4 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, 199 F.R.D. 425, 435-36 (2001). Copies of Rule 5.2, dealing with service, and Rules 7.4 and 7.5, regarding "tag-along" actions, are attached for your convenience.

Inasmuch as there is an unavoidable time lag between notification of the pendency of the tag-along action and the filing of a conditional transfer order, counsel are required by Rule 7.4(b) to notify this office **BY FACSIMILE**, at (202) 502-2888, of any official changes in the status of the tag-along action. These changes could involve dismissal of the action, remand to state court, transfer to another federal court, etc., as indicated by an order filed by the district court. Your cooperation would be appreciated.

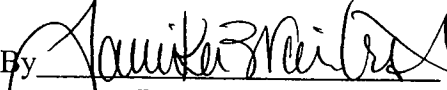
**NOTICE OF OPPOSITION DUE ON OR BEFORE: March 12, 2008 (4 p.m. EST)**  
(Facsimile transmission is suggested.)

If you are considering opposing this conditional transfer order, please review Rules 7.4 and 7.5 of the Panel Rules before filing your Notice of Opposition.

A list of involved counsel is attached.

Very truly,

Jeffery N. Lüthi  
Clerk of the Panel

By   
Deputy Clerk

Attachments

FEB 26 2008

FILED  
CLERK'S OFFICE

UNITED STATES JUDICIAL PANEL  
on  
MULTIDISTRICT LITIGATION

IN RE: AURORA DAIRY CORP. ORGANIC  
MILK MARKETING AND SALES  
PRACTICES LITIGATION

MDL No. 1907

(SEE ATTACHED SCHEDULE)

CONDITIONAL TRANSFER ORDER (CTO-1)


On February 20, 2008, the Panel transferred three civil actions to the United States District Court for the Eastern District of Missouri for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407. *See* \_\_\_ F.Supp.2d \_\_\_ (J.P.M.L. 2008). With the consent of that court, all such actions have been assigned to the Honorable E. Richard Webber.

It appears that the actions on this conditional transfer order involve questions of fact that are common to the actions previously transferred to the Eastern District of Missouri and assigned to Judge Webber.

Pursuant to Rule 7.4 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, 199 F.R.D. 425, 435-36 (2001), these actions are transferred under 28 U.S.C. § 1407 to the Eastern District of Missouri for the reasons stated in the order of February 20, 2008, and, with the consent of that court, assigned to the Honorable E. Richard Webber.

This order does not become effective until it is filed in the Office of the Clerk of the United States District Court for the Eastern District of Missouri. The transmittal of this order to said Clerk shall be stayed 15 days from the entry thereof. If any party files a notice of opposition with the Clerk of the Panel within this 15-day period, the stay will be continued until further order of the Panel.

FOR THE PANEL:

  
Jeffrey N. Luthi  
Clerk of the Panel

**IN RE: AURORA DAIRY CORP. ORGANIC  
MILK MARKETING AND SALES  
PRACTICES LITIGATION**

MDL No. 1907

**SCHEDULE CTO-1 - TAG-ALONG ACTIONS**

**DIST. DIV. C.A. #**

**CASE CAPTION**

**ARKANSAS EASTERN**

ARE 4 08-10

Paul Bowen v. Wal-Mart Stores, Inc.

**CALIFORNIA NORTHERN**

CAN 3 07-5331

Brenda Gallardo v. Aurora Dairy Corp.

CAN 3 07-6174

Shawn Riley v. Safeway, Inc.

**COLORADO**

CO 1 07-2285

Elizabeth Cockrell v. Aurora Dairy Corp.

CO 1 07-2449

Jim Snell, et al. v. Aurora Dairy Corp., et al.

CO 1 07-2622

Vicki M. Tysseling-Mattiace v. Wild Oats Markets, Inc.

CO 1 07-2625

Margot West, et al. v. Aurora Dairy Corp.

**MINNESOTA**

MN 0 07-4755

Patrick Hudspeth, et al. v. Target Corp.

**NEW YORK EASTERN**

NYE 2 07-4425

Ilsa Lee Kaye v. Aurora Dairy Corp.

**NEW YORK SOUTHERN**

NYS 1 07-9418

Hillary White, et al. v. Aurora Dairy Corp.

**WASHINGTON WESTERN**

WAW 2 07-1975

Channing Hesse v. Costco Wholesale Corp.

# Exhibit C

Mark S. Mester  
Direct Dial: +312.876.7623  
Mark.Mester@lw.com

Sears Tower, Suite 5800  
233 S. Wacker Dr.  
Chicago, Illinois 60606  
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## LATHAM & WATKINS LLP

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Madrid	Silicon Valley
Milan	Singapore
Moscow	Tokyo
Munich	Washington, D.C.

February 26, 2008

### BY FEDERAL EXPRESS

Jeffery N. Lüthi  
Clerk of the Panel  
Judicial Panel on Multidistrict Litigation  
Thurgood Marshall Federal Judiciary Building  
One Columbus Circle, N.E.  
Room G-255, North Lobby  
Washington, D.C. 20002-8004

Re: MDL No. 1907: In re Aurora Dairy Corporation  
Organic Milk Marketing and Sales Practice Litigation

Dear Mr. Lüthi:

We received the Transfer Order entered February 20, 2008 by the Judicial Panel on Multidistrict Litigation ("Panel") transferring and consolidating the four actions listed on the attached Schedule. See Feb. 20, 2008 Transfer Order, attached hereto. We further note that the Panel identified an additional eleven related actions for which we understand the Clerk of the Panel will be issuing conditional transfer orders in the near term. See id. at 1 n.1.

Pursuant to Rule 7.5 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, 199 F.R.D. 425 (2001), we have identified an additional three actions for which conditional transfer orders should issue. These actions were initially filed in state court but have since been removed to federal court. The complaints (for which the notices of removal, without exhibits, are also provided) are attached, without exhibits. The actions themselves are as follows:

- DiSimone v. Aurora Dairy Corp. et al., Case No. CV-08-0746-DSF (C.D. Cal. Feb. 4, 2008);
- Cowan v. Aurora Dairy Corp. et al., Case No. 1:08-CV-0157-RLY-WTL (S.D. Ind. Feb. 6, 2008); and
- King v. Safeway, Case No. CV-08-999 (N.D. Cal. Feb. 19, 2008).

cc: Counsel on attached Service List (w/Enclosures)

# Exhibit D



**Dan Kurowski**

---

**From:** Dan Kurowski  
**Sent:** Wednesday, March 05, 2008 7:41 AM  
**To:** 'Kathleen.Lally@lw.com'  
**Subject:** King v. Safeway, Inc. (N.D. Cal.)

Kate,

As you are aware, we are planning on filing a Motion to Remand in the *King v. Safeway, Inc.* matter which was removed to the Northern District of California on February 19th.

Due to limitations in the judge's schedule, we would like to schedule the hearing on the Motion to Remand on April 1st and we would like to give the Court two weeks prior to the hearing date review a fully briefed motion. Accordingly, I am writing to find out if your client is willing to stipulate to a somewhat truncated briefing schedule. We propose the following briefing schedule:

- Opening Brief: Today
- Opposition due: Friday, March 14
- Reply due : Tuesday, March 18
- Hearing: Tuesday, April 1

Please let me know by noon central today. Thank you in advance for your cooperation. If you have any questions, please feel free to give me a call.

Dan

Daniel J. Kurowski, Esq.  
Hagens Berman Sobol Shapiro LLP  
820 North Boulevard, Suite B  
Oak Park, IL 60301  
Direct - (708) 776-5606  
Fax - (708) 776-5601  
[dank@hbsslw.com](mailto:dank@hbsslw.com)

# Exhibit E

## Dan Kurowski

---

**From:** Kathleen.Lally@lw.com  
**Sent:** Wednesday, March 05, 2008 9:13 AM  
**To:** Dan Kurowski  
**Subject:** Hesse - Dec. of K. Lally in Support of Stipulation to suspend pre-trial.DOC;Hesse Stipulation for extension of time.DOC  
**Attachments:** Hesse - Dec. of K. Lally in Support of Stipulation to suspend pre-trial(1010356\_3\_CH).DOC; Hesse Stipulation for extension of time(1010341\_3\_CH).DOC

<<Hesse - Dec. of K. Lally in Support of Stipulation to suspend pre-trial(1010356\_3\_CH).DOC>> <<Hesse Stipulation for extension of time(1010341\_3\_CH).DOC>>

Dan,

Attached please find the near final versions of the Stipulation and Declaration for your approval. At this point, all that needs to be filled in are the consecutive page numbers for the exhibits, which I will do as soon as the exhibits are gathered.

In addition, I received your request regarding King. We will consider the matter and get back to you as soon as practicable.

Thank you,  
Kate

**Kathleen P. Lally**

**LATHAM & WATKINS <sup>LLP</sup>**  
Sears Tower, Suite 5800  
233 South Wacker Drive  
Chicago, IL 60606  
Direct Dial: +1.312.777.7005  
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Email: kathleen.lally@lw.com  
<http://www.lw.com>

\*\*\*\*\*  
To comply with IRS regulations, we advise you that any discussion of Federal tax iss

For more information please go to <http://www.lw.com/docs/irs.pdf>

\*\*\*\*\*

This email may contain material that is confidential, privileged and/or attorney wor

Latham & Watkins LLP

3/5/2008